IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION No.816 OF 2005

Mr.Soyab Shakeel Ahmed & Ors. .. ..Petitioners

Versus

Smt. Nirmala Narayan Datar & ors. ..Respondents

Mr.A.K.Chaturvedi i/b A.M.Saraogi for petitioners

Mr. Y.V.Divekar i/b Divekar & Co. for respondent Nos.1 to 5

CORAM : P.V.KAKADE, J.

DATE : 19TH JANUARY 2006.

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. This Petition is preferred against the order dated 19.10.2004 passed by the Small Causes Court in Appeal No.663 of 2004 wherein Notice No.951 of 2004 came to be moved for condonation of delay in filing the appeal.

. The present petitioner who was original plaintiff in the said suit moved the appellate court seeking condonation of delay of 112 days in preferring the appeal. The lower appellate court on hearing both the parties came to the conclusion that in given set of facts and circumstance of the case the appellant had failed to make out the case for condonation of delay by proving or establishing that just and sufficient cause for non preferring appeal within the statutory period would be made out and consequently the application for condonation of delay came to be dismissed and notice was discharged.

3. In the course of arguments it is brought to my notice that between parties Suit No.98/115 of 1982 was filed wherein the issue of alleged tenancy rights of the present petitioners were finally adjudicated holding that the present petitioners had failed to prove that they were tenant in the suit properties. It is pertinent to note

that the said findings attained finality. In the light of this position, the Suit No.4650 of 1981 was dismissed holding that the present petitioners were not tenant for which the appeal was required to be preferred within time, which was not done. In view of this position, the learned counsel for the respondent has rightly submitted that the suit itself has become infructuous in view of the findings recorded in earlier Suit No.98/115 of 1982 against which there was no appeal. Apart from this aspect, the perusal of the entire factual aspects involved herein shows that there is absolutely no case made out for condonation of delay and the lower court was right in holding that the delay could not be condoned for want of sufficient and satisfactory reason.

4. Under the circumstances, I do not see any reason to interfere with the order passed by the lower court and hold that there is no merit in the petition and therefore, petition stands dismissed with no order as to costs.